

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
RNK, Inc. d/b/a RNK Telecom, Nuvio)	
Corporation, Unipoint Enhanced Services d/b/a)	
Pointone, Dialpad Communications, Inc.,)	CC Docket No. 99-200
Vonage Holdings Corporation, and Voex, Inc.)	
Petitions for Limited Waiver of)	
Section 52.15(g)(2)(i) of the Commission's Rules)	
Regarding Access to Numbering Resources)	
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**COMMENTS OF XO COMMUNICATIONS, INC. IN RESPONSE
TO THE PETITIONS FOR LIMITED WAIVERS OF SECTION 52.15(g)(2)(i)**

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April 11, 2005

EXECUTIVE SUMMARY

In the late 1990s, the rapid rate at which new area codes were being assigned had created a “near-crisis state” of the North American Numbering Plan (“NANP”). In order to prevent premature exhaust of the NANP and delay the need to develop and implement costly new numbering plans, the FCC adopted rules to permit the most effective and efficient use of a finite numbering resource. In the SBCIS Waiver Order, the Commission made clear that SBCIS and every entity that subsequently receives a similar waiver must (1) comply with the FCC’s other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, and (2) process port requests *directly* rather than going through a LEC. These requirements are designed not only to ensure that numbering resources are used efficiently and returned to NANPA or the PA when no longer needed, but also to ensure that numbering resources are not assigned *until the assignee is capable of using them*. An entity seeking the same type of waiver granted to SBCIS is not capable of using numbering resources until it can comply with all of the conditions set forth in the SBCIS Waiver Order.

If numbers are assigned to entities that are not capable of using those numbering resources, the resources will be unnecessarily stranded (*i.e.*, not used by the assignee and unavailable for use by any other entity), or the entity will use the numbering resources in a manner that is in violation of the FCC’s numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices. Neither result is consistent with the public interest. To make matters worse, the numbering resources will have to be reclaimed, which can negatively affect end users, not to mention other service providers. Therefore, failure to ensure that Petitioners are ready to use numbering resources (*i.e.*, are

capable of complying with all of the conditions imposed in the SBCIS Waiver) before those numbering resources are assigned would be flatly inconsistent with the public interest.

The FCC, rather than the NANPA or the state commissions, is in the best position to ensure that Petitioners are currently capable of complying with all of the conditions imposed in the SBCIS Waiver. The NANPA is tasked only with ensuring that applicants have met the general requirements set forth in the FCC's rules and orders and the industry guidelines, not to engage in the type of detailed factual inquiry necessary to determine whether an IP-enabled service provider is capable of complying with the conditions set forth in the SBCIS Waiver Order. Forcing state commissions to make this determination after the FCC has granted a petition for waiver of federal rules would unfairly shift the burden to state commissions and require each Petitioner to make a separate showing regarding capability to each individual state in which the Petitioner seeks numbering resources. Not only would this process be unnecessarily duplicative and incredibly inefficient both for the state commissions and the Petitioners, but it would also greatly increase the chance of inconsistent standards and decisions across the nation. This result would be flatly inconsistent with the public interest.

By contrast, the FCC, which has plenary jurisdiction over numbering and number portability, is in the best position to make the detailed factual inquiry necessary to determine whether Petitioners *are capable of* (1) complying with *the FCC's* numbering utilization and optimization requirements, numbering authority delegated to the states *by the FCC*, and industry guidelines and practices, and (2) processing port requests *directly* rather than going through a LEC. This is particularly true since most, if not all, of the entities who will seek this type of waiver are providers of IP-enabled services over which *the FCC* has asserted jurisdiction.

The Petitioners in this proceeding have all requested the same waiver that the Commission granted to SBCIS. However, none of the Petitioners have demonstrated that they are actually capable of complying with the conditions the FCC imposed on SBCIS. Merely stating that one is willing to comply with the same conditions imposed on SBCIS is not sufficient to demonstrate that grant of the requested waiver is warranted, particularly where it is not obvious that non-common carriers will even be capable of complying with those conditions. Accordingly, grant of the requested waivers would serve the public interest only to the extent that the FCC, rather than the NANPA or the state commissions, determines that Petitioners *are capable of* complying with the conditions imposed in the SBCIS Waiver Order.

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**COMMENTS OF XO COMMUNICATIONS, INC. IN RESPONSE
TO THE PETITIONS FOR LIMITED WAIVERS OF SECTION 52.15(g)(2)(i)**

Pursuant to the Commission's Public Notice in the above-captioned proceedings,¹ and sections 1.415 and 1.419 of the Commission's rules,² XO Communications, Inc. ("XO") submits these Comments in response to the petitions by RNK, Inc. d/b/a RNK Telecom, Nuvio Corporation, Unipoint Enhanced Services d/b/a Pointone, Dialpad Communications, Inc., Vonage Holdings Corporation, and Voex, Inc. ("Petitioners") for a limited waiver of section 52.15(g)(2)(i) of the Federal Communication Commission's (the "Commission") rules, which provides that numbering resources may be assigned only to state-certificated common carriers. This Commission granted this same relief to SBCIS that allows SBCIS to obtain numbering resources directly from the North American Numbering Plan Administration ("NANPA") and/or the Pooling Administrators ("PA") until the Commission adopts the final numbering rules for IP-

¹ See *Wireline Competition Bureau Seeks Comment on RNK, Inc. d/b/a RNK Telecom, Nuvio Corporation, Unipoint Enhanced Services d/b/a Pointone, Dialpad Communications, Inc., Vonage Holdings Corporation, and Voex, Inc. Petitions for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, Public Notice, CC Docket No 99-200, DA 05-663 (rel. March 11, 2005).

² 47 C.F.R. § 52.15(g)(2)(i).

enabled services.³ XO believes Petitions should be granted only if the Petitioner demonstrates to the Commission that it is capable of complying with the Commission's numbering utilization and optimization requirements and industry guidelines and practices. To satisfy the public interest, the Commission conditioned SBCIS's waiver on its compliance with these conditions and should make a determination if each Petitioner can satisfy the same conditions before granting a waiver.⁴

I. THE COMMISSION MAY WAIVE A RULE ONLY WHERE THE PARTICULAR FACTS BEFORE IT MAKE STRICT COMPLIANCE INCONSISTENT WITH THE PUBLIC INTEREST

Pursuant to Section 1.3 of the Commission's rules, a rule may be waived upon a showing of "good cause."⁵ The Commission may exercise its discretion to waive a rule, but only when the particular facts before it make strict compliance inconsistent with the public interest.⁶ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.⁷ In the exercise of discretion, the Commission may take into consideration certain special circumstances, such as hardship to the parties, but a waiver of the Commission's rules is appropriate only when special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁸

³ See *Administration of the North American Numbering Plan*, Order, CC Docket No. 99-200, FCC 05-20 (rel. Feb. 1, 2005) (*SBCIS Waiver Order*).

⁴ See *id.* at ¶ 9.

⁵ See 47 C.F.R. § 1.3.

⁶ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Midwest Wireless Iowa, LLC Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 04-1688 ¶ 3 (rel. June 14, 2004).

⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁸ See *Northeast Cellular*, *supra*, 897 F.2d at 1166.

II. COMPLIANCE WITH ALL OF THE FCC'S RULES REGARDING NUMBERING RESOURCE OPTIMIZATION AND NUMBER PORTABILITY IS IN THE PUBLIC INTEREST

A. The FCC's Rules Are Designed To Ensure That Numbers Are Not Assigned Before They Are Ready To Be Used, Numbers Are Used As Efficiently As Possible, And Numbers That Are No Longer Being Used Are Returned As Soon As Possible.

Shortly before the FCC implemented numbering optimization measures, the rapid rate at which new area codes were being assigned had created a “near-crisis state of the [North American Numbering Plan (“NANP”)].”⁹ The FCC recognized that, as new services emerged and demands for new numbers grew, “the rate at which existing area codes [were] entering a state of jeopardy and new area codes [were] being activated ... ha[d] accelerated exponentially in the past several years” and that it was “foreseeable that the NANP could exhaust within ten years unless measures were taken to slow the rate at which numbering resources are being used.”¹⁰

In order to “prevent premature exhaust of the NANP and delay the need to develop and implement costly new numbering plans,” the Commission adopted rules “to permit the most effective and efficient use of a finite numbering resource.”¹¹ The Commission’s rules serve three very important purposes. First, they ensure that carriers do not receive numbers before they are ready to use them.¹² Second, they ensure that, once numbers have been assigned to carriers, they

⁹ *Numbering Resource Optimization*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-20, 15 FCC Rcd 7574 at 7577, ¶ 1 (2000) (*First Report and Order*). In exercising its plenary jurisdiction over the North American Numbering Plan the FCC identified two primary goals. *See id.* (“One is to ensure that the limited numbering resources of the NANP are used efficiently, to protect customers from the expense and inconvenience that result from the implementation of new area codes, some of which can be avoided if numbering resources are used more efficiently, and to forestall the enormous expense that will be incurred in expanding the NANP. The other goal is to ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications marketplace.”).

¹⁰ *See id.* at ¶ 2.

¹¹ CO Code Assignment Guidelines, INC 95-0407-008, Section 2.2 (February 4, 2005).

¹² *See, e.g.*, 47 C.F.R. § 52.15(g)(2)(i) (requiring applicants for numbering resources to include evidence that “applicant is authorized to provide service in the area for which the numbering

are used as efficiently as possible.¹³ Last, when carriers are no longer using numbers, the rules ensure that the numbers are returned so they can be put back into use by other carriers.¹⁴

It is widely recognized that the FCC's numbering optimization rules and policies have been a key factor in slowing the rate at which NPA-NXXs were being assigned, and thus the rate at which new area codes were being opened. Therefore, the public interest requires that all entities to which numbering resources are assigned by NANPA or the PA comply with all of the Commission's numbering utilization and optimization requirements, the numbering authority delegated to the states, and the industry guidelines and practices. Otherwise, the rate at which new area codes are assigned will increase significantly due to the assignment of numbering resources to new market entrants who are not complying with the FCC's numbering utilization and optimization measures. This could again create a "near-crisis state of the NANP" and all of the efforts of the FCC, the states and the industry over the past six years will have been for naught.

resources are being requested."); 47 C.F.R. § 52.15(g)(2)(ii) (requiring applicants for numbering resources to include evidence that the "applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date."); 47 C.F.R. § 52.15(g)(3)(iii) ("All service providers shall maintain no more than a six-month inventory of telephone numbers in each rate center or service area in which it provides telecommunications service.")

¹³ See, e.g., 47 C.F.R. § 52.15(j)(1) ("All service providers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block."). See, also *id* ("numbering recipients must have a process for assigning numbers sequentially and determining what thousands-blocks can be donated").

¹⁴ See, e.g., 47 C.F.R. § 52.15(i)(5) ("The NANPA and the Pooling Administrator shall abide by the state commission's determination to reclaim numbering resources if the state commission is satisfied that the service provider has not activated and commenced assignment to end users of their numbering resources within six months of receipt."); 47 C.F.R. § 52.15(f)(1)(ii) ("Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 365 days.")

B. The Commission Conditioned Grant of SBCIS's Waiver On SBCIS's Compliance With All Of The FCC's Rules Regarding Numbering Resource Optimization And Number Portability

The Commission correctly found that granting SBCIS the waiver it requested would serve the public interest only to the extent that SBCIS “compl[ied] with the Commission’s other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices.”¹⁵ Importantly, the FCC also clarified that “SBCIS will be responsible for processing port requests *directly* rather than going through a LEC.”¹⁶ Moreover, the Commission required SBCIS “to file any requests for numbers with the Commission and the relevant state commission at least thirty days prior to requesting numbers from the NANPA or the PA.”¹⁷ The Commission found that mandating compliance with these requirements was necessary to further the agency’s goal of using the limited numbering resources of the NANP efficiently.¹⁸

The Commission also made clear in the SBCIS Waiver Order that, “[t]o the extent other entities seek similar relief [the agency] would grant such relief to an extent comparable to what we set forth in this Order.”¹⁹ Accordingly, any party seeking a waiver of Section 52.15(g)(2)(i) of the Rules must comply with all of the “Commission’s other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices.”²⁰

¹⁵ *SBCIS Waiver Order* at ¶ 4.

¹⁶ *Id.* at ¶ 9 (emphasis added).

¹⁷ *Id.* at ¶ 4.

¹⁸ *Id.* at ¶ 9.

¹⁹ *Id.* at ¶ 11.

²⁰ *Id.* at ¶ 4.

III. THE FCC SHOULD REQUIRE PETITIONERS TO DEMONSTRATE THAT THEY ARE CAPABLE OF COMPLYING WITH THE SBCIS CONDITIONS BEFORE GRANTING ANY ADDITIONAL WAIVERS

The Petitioners in this proceeding have all requested the same waiver that the Commission granted to SBCIS.²¹ However, none of the Petitioners have demonstrated that they are actually capable of complying with the conditions the FCC imposed on SBCIS.²² For the

²¹ See, e.g., *RNK Petition* at 16 (requesting “the Commission grant RNK’s relief to the extent comparable to that set forth in FCC 05-20.”); *UniPoint Petition* at 7 (“PointOne is requesting comparable relief to that requested by SBCIS in its petition.”); *VoEx Petition* at 4 (“VoEX requests the waiver of Section 52.15(g)(2)(i) in a manner comparable to the SBC-IS waiver.”)

²² See *Dialpad Petition* at 6-7 (“Dialpad submits that it will comply with all of the relevant conditions the Commission established in granting SBC-IS’ request for numbering resources. Specifically, Dialpad will comply with the Commission’ numbering utilization and optimization requirements and industry guidelines and practices. Dialpad will comply with all relevant numbering regulations. Dialpad will also file the Numbering Resource Utilization and Forecast Report and will comply with the thousand-block number pooling requirements and with local number portability requirements. In addition, Dialpad asserts that it will meet the ‘facilities readiness’ requirements of Section 52.15(g)(2)(ii). Dialpad will provide a copy of an interconnection agreement approved by a state commission, or, alternatively, Dialpad will submit evidence, prior to filing an application for numbering resources, that it has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled voice services.”); *Nuvio Petition* at 2 (“Nuvio is amendable to complying with the numbering resource-related conditions that the Commission imposed upon SBCIS in paragraphs 9 and 10 of the Order.”); *RNK Petition* at 13-14 (“RNK accepts the same numbering-related conditions that were imposed on SBCIS. In fact, because - at least within its existing CLEC footprint - RNK has over five years’ experience in compliance with these requirements already, which is easily scalable in looking forward to new markets. RNK already has experienced staff familiar with industry norms and practices, as well as regulatory requirements associated with using assigned numbers.”); See *UniPoint Petition* at 8. (“In its SBCIS Waiver Order, the Commission stated that SBCIS should submit ‘an interconnection agreement with the incumbent LEC that serves the geographic area in which the carrier proposes to operate or proof of purchase of interconnection via a lawful and approved tariff.’ PointOne is not opposed to a similar condition on its grant of authority. However, PointOne agrees with RNK that the Commission should permit the unaffiliated VoIP providers to demonstrate facilities readiness by providing interconnection or traffic exchange agreements with any LEC service the relevant geographic area not just the relevant ILEC.”); *VoEX Petition* at 6. (“VoEX submits that it will comply with all of the relevant conditions the Commission established in granting SBC-IS’ request for numbering resources. Specifically, VoEX will comply with the Commission’ numbering utilization and optimization requirements and industry guidelines and practices as well as all other applicable state numbering regulations. VoEX will also file the Numbering Resource Utilization and Forecast Report and will comply with the thousand-block number pooling requirements and with local number portability requirements. In addition, VoEX asserts that it will meet the ‘facilities readiness’ requirements of Section 52.15(g)(2)(ii). VoEX will provide a copy of an interconnection agreement approved by a state commission, or, alternatively, VoEX will submit evidence, prior to filing an application for numbering resources, that it has ordered an

reasons stated below, merely stating that one is willing to comply with the same conditions imposed on SBCIS is not sufficient to demonstrate that grant of the requested waiver is warranted, particularly where it is not obvious that non-common carriers will even be capable of complying with those conditions.

A. The FCC Should Require Petitioners To Demonstrate That They Currently Are Capable Of Complying With The Same Conditions The FCC Imposed On SBCIS.

In the SBCIS Waiver Order, the Commission made clear that SBCIS and every entity that subsequently receives a similar waiver must “comply with the Commission’s other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices,”²³ and “process[] port requests *directly* rather than going through a LEC.”²⁴ As explained above, these requirements are designed not only to ensure that numbering resources are used efficiently and returned to NANPA or the PA when no longer needed, but also to ensure that numbering resources are not assigned *until the assignee is capable of using them*. An entity is not capable of using numbering resources until it can comply with all of the Commission’s numbering utilization and optimization requirements, the numbering authority delegated to the states, and industry guidelines and practices, and, in this case, can process port requests *directly* rather than going through a LEC.

interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled voice services.”); *Vonage Petition* at 6 (“Vonage submits that it will comply with all of the conditions the Commission established in granting SBC-IS’ request for numbering resources. Specifically, Vonage will comply with the Commission’s numbering utilization and optimization requirements and industry guidelines and practices. Vonage will comply with all relevant numbering regulations. Vonage will also file the Numbering Resource Utilization and Forecast Report, will comply with the thousand-block numbering pooling requirements, and will continue to act in accordance with local number portability requirements.”).

²³ *SBCIS Waiver Order* at ¶ 4.

²⁴ *Id.* at ¶ 9 (emphasis added).

The Commission has repeatedly emphasized the importance of not assigning numbering resources before the assignee is capable of using them.²⁵ The conditions the Commission imposed in the SBCIS Waiver Order are designed, among other things, to ensure that subsequent waiver recipients, like all other numbering resources assignees, do not receive numbering resources before they are ready to use them.²⁶

If numbers are assigned to entities that are not capable of using those numbering resources, the resources will be unnecessarily stranded (*i.e.*, not used by the assignee and unavailable for use by any other entity), or the entity will use the numbering resources in a manner that is in violation of the FCC's numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices. Neither result is consistent with the public interest. To make matters worse, the numbering resources will have to be reclaimed, which can negatively affect end users, not to mention other service providers. Therefore, failure to ensure that Petitioners are ready to use numbering resources (*i.e.*, are capable of complying with all of the conditions imposed in the SBCIS Waiver) before those numbering resources are assigned would be flatly inconsistent with the public interest.

It is crucial that Petitioners affirmatively demonstrate they are capable of (1) complying with the Commission's numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, and (2) processing port requests *directly* rather than going through a LEC, because it is not obvious that all providers of

²⁵ See, e.g., *First Report and Order* at ¶ 88 (“The absence of reliable needs-based verification standards has resulted in numbering resources being distributed to carrier in a less than efficient or optimal manner.”); *id.* at ¶ 92 (“We seek to ensure that numbering resources are allocated efficiently in the first instance.”); *id.* at ¶ 96 (“We conclude that allowing carriers to build inventories before they are prepared to offer service results in highly inefficient distribution of numbering resources.”).

²⁶ See *SBCIS Waiver Order* at ¶ 9 (“Requiring SBCIS to comply with numbering requirements will help alleviate concerns with numbering exhaust.”).

IP-enabled services will be capable of complying with these requirements. For example, in order to process port requests directly rather than going through a LEC, an entity must establish connectivity with LNP databases and enter into arrangements with other carriers to ensure that port requests are processed in accordance with the FCC's rules and industry guidelines. To date, providers of IP-enabled services have either not participated in LNP, because they are end users or telecommunications services, or they have relied on LECs to process port requests. As such, many providers of IP-enabled services are not capable of processing port requests directly, and will not be capable for some time. Therefore, Petitioners seeking a waiver must demonstrate that they actually have taken the steps necessary to comply with all of the requirements set forth in the SBCIS Waiver Order.

B. The FCC, Rather Than The NANPA, PA Or State Commission, Must Ensure That Petitioners Currently Are Capable Of Complying With The Same Conditions The FCC Imposed In The SBCIS Waiver Order.

The Commission is in the best position to ensure that Petitioners are capable of (1) complying with the Commission's numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, and (2) processing port requests *directly* rather than going through a LEC. NANPA is tasked only with ensuring that applicants have met the general requirements set forth in the FCC's rules and orders and the industry guidelines, not with making detailed factual inquiries regarding whether an IP-enabled service provider is ready to comply with the conditions set forth in the SBCIS Waiver Order.²⁷ In fact, the FCC's rules and the industry guidelines identify and enumerate the

²⁷ See, e.g., 47 C.F.R. § 52.13(b) ("The NANPA shall administer the numbering resources identified in paragraph (d) of this section. It shall assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner consistent with industry-developed guidelines and Commission regulations. It shall perform additional functions, including but not limited to: . . . (3) Complying with guidelines of the North American Industry Numbering Committee (INC) or its successor, related industry documentation, Commission regulations and

evidence that carriers must present with applications for numbering resources so that the NANPA need not make any detailed factual inquiries.²⁸ However, determining whether an entity is capable of complying with the conditions set forth in the SBCIS Waiver Order would require the NANPA to engage in a detailed factual inquiry because the evidence enumerated in the industry guidelines were never intended to serve as proxies for a demonstration that an IP-enabled service provider can comply with the conditions set forth in the SBCIS Waiver Order. Accordingly, the NANPA is not in a position to determine whether Petitioners are capable of complying with the conditions imposed in the SBCIS.

State commissions are not in the best position to determine whether Petitioners *are capable of* (1) complying with the Commission's numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, and (2) processing port requests *directly* rather than going through a LEC. For one thing, forcing the state to make this determination after the FCC has granted a petition for waiver of federal rules would unfairly shift the burden to state commissions and force each Petitioner to make a separate showing regarding capability to each individual state in which the Petitioner seeks numbering resources. Not only would this process be unnecessarily duplicative and incredibly inefficient both for the state commissions and the Petitioners, but it would also greatly increase the chance of inconsistent standards and decisions across the nation. This result would be flatly inconsistent with the public interest.

By contrast, the FCC, which has plenary jurisdiction over numbering resources, is in the best position to whether Petitioners *are capable of* (1) complying with *the FCC's* numbering

orders, and the guidelines of other appropriate policy-making authorities, all of which may be modified by industry fora or other appropriate authority”).

²⁸ CO Code Assignment Guidelines, INC 95-0407-008, Section 4 (February 4, 2005).

utilization and optimization requirements, numbering authority delegated to the states *by the FCC*, and industry guidelines and practices, and (2) processing port requests – an issue over which *the FCC* has sole jurisdiction – *directly* rather than going through a LEC. This is particularly true since most, if not all, of the entities who will seek this type of waiver are providers of IP-enabled services over which *the FCC* has asserted jurisdiction. Moreover, the FCC, unlike state commissions, can make the determination once for the entire nation, which is far more efficient than requiring Petitioners to make the same showing multiple times to various state commissions. Accordingly, grant of the requested waivers would serve the public interest only to the extent that the FCC, rather than the NANPA or the state commissions, determines that Petitioners *are capable of* complying with the conditions imposed in the SBCIS Waiver Order.

C. The FCC Should Not Grant Any Waivers Until After Petitioners Have Demonstrated That They Currently Are Capable Of Complying With The Same Conditions The FCC Imposed On SBCIS.

The Commission should require a Petitioner affirmatively to demonstrate that it is currently capable of complying with the conditions imposed in the SBCIS Waiver Order before granting a waiver of section 52.15(g)(2)(i) of the FCC's rules. As explained above, the FCC has already determined that waivers would serve the public interest only to the extent that applicants comply with the conditions imposed in the SBCIS Waiver Order, and the FCC is in the best position to determine whether a Petitioner is capable of complying with those conditions. Applicants for waiver bear a heavy burden of demonstrating that grant of the requested waiver is warranted.²⁹ Accordingly, under the FCC's waiver rules, Petitioners bear the burden of demonstrating to the FCC that they are capable of complying with the conditions set forth in the

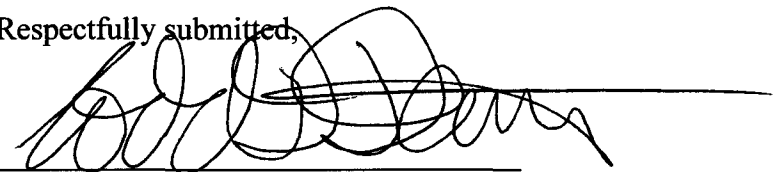
²⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

SBCIS order before the FCC rules on their waiver petitions. To the extent that a Petitioner cannot demonstrate that they are already capable of complying with the conditions set forth in the SBCIS Waiver Order, grant of the requested waiver would not serve the public interest.³⁰

IV. CONCLUSION

For the foregoing reasons, XO respectfully requests that the Commission grant the relief the Petitioners request only if they can first demonstrate that they are currently capable of complying with the Commission's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, and processing port requests *directly* rather than going through a LEC.

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Moreover, unless the FCC makes this determination before it grants the waiver, the agency will have to reexamine this issue each time the waiver recipient applies for additional numbering resources, which would waste the resources of both the agency and the waiver recipient. *See SBCIS Waiver Order* at ¶ 4.